Supreme Court, U. S.
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74-1402

IN THE SUPREME COURT OF THE UNITED STATES

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SUPREME COURT, U.S.

CHARLES L. HAM, Petitioner,

vs.

THE CITY OF TULSA
A Municipal Corporation,
Respondent.

Appeal from the Tenth Circuit Court of Appeals, Case Number 74-1631

PETITION FOR WRIT OF CERTIORARI

Robert Lee Blackwood
Attorney for Petitioner
1311 South Guthrie
Tulsa, Oklahoma, 74119

Service To: Mr. Phillip Haney
Asst. City Attorney
City Hall
Tulsa, Oklahoma 74103

IN THE SUPREME COURT OF THE UNITED STATES

CHARLES L. HAM,
Petitioner,

vs.

THE CITY OF TULSA,
A Municipal Corporation,
Respondent.

PETITION FOR WRIT OF CERTIORARI

COMES NOW, the Petitioner and for Petition of Certiorari, does herein submit,to-wit:

a. Petitioner does appeal from the decision of the United States Circuit Court of Appeals for the Tenth Circuit. The mandate of the Tenth Circuit Court of Appeals was entered on the 7th day of February, 1975, and is attached here as Appendix I.

b. The Petitioner invokes the jurisdiction of this Court to review the judgment of the Tenth Circuit Court of Appeals because this Petitioner has the constitutionally protected right under the Fourth, Fifth, Ninth, and Fourteenth Amendments to the United States Constitution to be free from unreasonable searches, seizures and to prohibit his personal property, books and papers from being taken from him by the City of Tulsa without due process of law, and, further, the Petitioner does have standing to sue for the protection of his civil rights and damages for the taking of his personal property, books and papers

without the payment of damages therefore by the City of Tulsa by virtue of 42 U.S. C.A., Sec. 1983 and 1988. And, that Petitioner has the further right to be compensated for the public taking and use of his personal property, books and papers without the payment of just compensation therefor in accordance with Article II, Section 24 of the Oklahoma Constitution which prohibits the taking of private property for public use without the payment of just compensation therefor, and that to deny Petitioner this right is to deny him of equal protection of the law prohibited by the Fourteenth Amendment, and does also deny the Petitioner the right to the security of his privacy and the invasion thereof by a municipality which is prohibited by the Fourth, Fifth, and Ninth Amendments to the United States Constitution.

c: Questions presented for review are the following:

May the poorest man in his cottage enjoy his privacy and bid defiance to all the forces of the municipal police power when they have taken his private books, papers and personal property, contrary to the provisions of the Fourth and Fourteenth Amendments to the United States Constitution?

And, if the Police Power of a municipality does cross the threshold of the ruined tenement contrary to the United States Constitution,does not the citizen have the right to sue for damages for the trespass of his privacy, as well as for the taking of his books, papers and property

and the protection of his civil rights, pursuant to the law and equitable powers contained in 42 U.S.C.A. 1983 and 1988 of the federal statutes, and contrary to the provision in the citizens constitution prohibiting the taking of private property without the payment of just compensation therefor ?

A concise statemen. .f the facts of the appeal are as follows:

Petitioner's property was taken from his residence on the 30th day of May, 1973, pursuant to an illegal search warrant which did not comply with the law of the State of Oklahoma. The City of Tulsa obtained the illegal warrant and used it to enter the Petitioner's residence, whereupon certain items of Petitioner's personal papers and property, including childrens' books, of which he was the author, and personal records, were seized and taken by the Respondent municipality. Petitioner claimed that the wrongful actions of the Respondent were not only accomplished under color of State law, but that his property was taken from him without due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution, and that Petitioner should thereby be compensated under the State of Oklahoma Constitution which provides that private property cannot be taken for public use without just compensation being paid therefor; Article II, Section 24, Oklahoma Constitution. Respondent's Motion to Dismiss was sustained by the U.S. District Court for the North ern District of Oklahoma, due to the fact that 42 U.S.C.A., 1983 did not contemplate municipalities as being persons within the

meaning of federal law. Petitioner's suit was dismissed, although Petitioner countered with the fact that 42 U.S.C.A., 1988 provided the requisite equity jurisdiction for the federal issues of due process and the invasion of privacy and tnat the Court could thereby decide the compensation which Petitioner was entitled to by virtue of Article II, Section 24 of the Oklahoma Constitution as a question of pendent jurisdiction. Thereafter, Petitioner appealed to the United States Court of Appeals for the Tenth Circuit and the judgment of the United States District Court for the Northern District of Oklahoma was affirmed by virtue of this Court's holdings in Moor v. County of Alameda, 411 U.S. 693, (1973); Monroe v. Pape, 365 U.S. 167, (1961).

d. The jurisdiction of the Federal Court was sought by this Petitioner on the basis that his civil rights had been violated in accordance with 42 U.S.C.A., Section 1983 and Section 1988, and that his constitutional rights in accordance with the Fourth Fifth, Ninth and Fourteenth Amendments were violated. The Petitioner seeks review in this Court because the Petitioner was denied standing to sue under 42 U.S.C.A., Section 1983, and it was held that the equity jurisdiction provided in 42 U.S.C.A. did not allow him to sue the City of Tulsa for compensation for the taking of his books,papers and property. Further, this Court should entertain jurisdiction for a Writ of Certiorari in accordance with Rule 19b of this Court, due to the fact that the Tenth Circuit Court of Appeals has decided that equity jurisdiction of 42 U.S.C.A., Section 1988 does not allow actions by a citizen

against a municipality for damages when Justice Marshall in the majority opinion in Moor v. County of Alameda, 411 U.S. 693, (1973) expressly recognized that there is an area of equity jurisdiction which may be invoked by 42 U.S.C.A.,1988. And, the Petitioner's case now before this Court is exactly the type of case that Justice Douglas wrote about in his dissent in the Moor v. County of Alameda case.

e. The Court below held that Moor v. County of Alameda, et al. (1973); 411 U. S. 693, and Monroe v. Pape (1961), 365 U.S. 167 as being conclusive of this matter since in those cases it was held that a municipality was not a "person" within the meaning of the Civil Rights Act. At this point I would direct the attention of the Court to the dissenting opinion of Justice Douglas which begins at page 723 of the Moor v. County of Alameda case. In that dissent, Justice Douglas correctly points out that in the Monroe v. Pape decision, the issue was whether or not municipalities were liable in damages and Justice Douglas also aptly points out that the claims in Monroe v. Pape were being strongly pressed because "private remedies against officers for illegal searches and seizures are conspicuously ineffective,and because municipal liability will not only afford plaintiffs responsible defendants, but cause those defendants to eradicate abuses that exist at the police level." Further, Justice Douglas correctly points out that 42 U.S.C.A., Section 1983 permits equitable relief as well as damages and cites the case of Mitchum v. Foster, 407 U.S. 225 at page 242 for the following:

> This legislation makes evident that

> Congress clearly conceived that it was altering the relationship between the States and the nation with respect to the protection of Federally created rights; it was concerned that State instrumentalities could not protect those rights; it realized that State officers might, in fact, be antipathic to the vindication of those rights; and it believed that these failings extended to the State Courts.

Therefore, this Court must carefully weigh the right of this Petitioner to have some type of equitable relief, if not in damages, pursuant to 42 U.S.C.A., Section 1983, 1988 or for the return of his property, then for compensation for property which was deprived from him by the lack of due process of law which is guaranteed to the appellant, not only by Article II, Section 24 of the Oklahoma Constitution, but also by virtue of the Fourteenth Amendment to the United States Constitution.

Since 1765 in the case of Entick v. Carrington and Three Other Kings' Messangers, 19 Howell's State Trials, 1029, a subject of the English Kingdom has had the right to sue for his damages in trespass for the seizure of his papers and books. Should a citizen of the United States be afforded less a right, even though the adoption of the Fourth Amendment to our Constitution was a colonial recognition of the wrongs inherent in writs of assistance which fostered unreasonable searches and seizures. Boyd v. United States, 116 U.S. 616, 630 (1886) views the matter correctly:

> It is not the breaking of his doors, and the rummaging of his drawers that

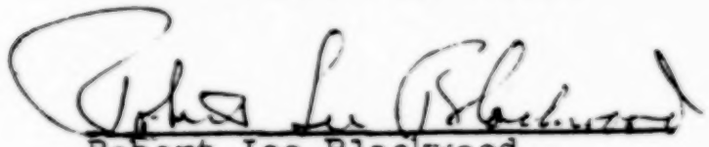
> constitutes the essence of the offense, but the invasion of his indefeasible right to personal security, personal liberty and private property...

And, in this case, Petitioner should be compensated for the taking of his private property and 42 U.S.C.A. gives the federal Courts the right to have this Petitioner compensated pursuant to Article II, Section 24 of the Oklahoma Constitution.

Equally important in this appeal is the fact that the appellant, as guaranteed by the penumbra of constitutional rights guaranteed by the First, Fourth, Fifth and Ninth Amendments to the United States Constitution, as well as by the protection and due process clause of the Fourteenth Amendment, is entitled to an enclave of privacy which is protected from governmental intrusion. Griswold v. State of Conn. 85 S.Ct. 1678, 381 U.S. 479, 14 L. Ed. 510; Katz v. U.S.,88 S.Ct. 507, 389 U.S. 347, 19 L.Ed. 576 (1967). Thus, it is quite important that when the Court is considering the questions which not only involve the invasion of the privacy of a citizen's domicle, but also encompase the taking of personal property and papers contrary to the Fourteenth Amendment, that the Court must protect the Federal civil rights of the citizen involved by extending the equitable protections of the equal protection and due process clause as being applicable against the exercise of State power, however manifested, whether exercised

directly or through municipal subdivisions of the State. See Avery v. Midland County Texas,88 S.Ct. 1114, 309 U.S., 474, 20 L. Ed.2d. 45 , on remand, 430 SW2d. 482 (1968).

Respectfully submitted,



Robert Lee Blackwood
Attorney for Petitioner

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

CHARLES L. HAM,

Plaintiff,

vs.

THE CITY OF TULSA,
A Municipal Corporation,
Defendant.

74-C-234

FILED
SEP 1974
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER SUSTAINING DEFENDANT'S MOTION TO DISMISS AND DISMISSING THE CAUSE OF ACTION AND COMPLAINT

The Court has for consideration the Defendant's Motion to Dismiss, the briefs in support and opposition thereto, and, being fully advised in the premises, finds:

Plaintiff originally instituted this action on May 24, 1974, by filing a Complaint consisting of Two Counts.

Jurisdiction in the original Complaint was predicated on the fact that plaintiff was a lawful resident of the City of Tulsa and was deprived of his right to be protected from unreasonable searches and seizures under the 4th Amendment; that his Constitutionally protected rights of privacy were invaded; and that his property was taken without due process of law guaranteed by the 14th Amendment.

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Plaintiff further alleges that the City of Tulsa failed to compensate him for the public use of his property in accordance with Article II, Sec. 24 of the Oklahoma Constitution.

The alleged defective warrant was for marijuana. It is alleged that said warrant was executed by certain police officers of the City of Tulsa (unnamed in the petition and not parties to this litigation). It is further alleged that plaintiff was taken into custody and after posting a proper bond returned to his home and discovered that his home had been ransacked and that certain items of personal property consisting of jewelry, old coins, novelties and certain series of children's books authored by plaintiff had been taken from the premises and have not been returned nor has plaintiff been compensated as required by Article II, Section 24 of the Oklahoma Constitution. Plaintiff seeks damages in the sum of $83,000.00. Plaintiff alleges that the defendant was motivated with the intent to harm and harass the plaintiff for having exercised his right of free speech, as guaranteed by the 1st Amendment, and for exercising his right to have people peaceably assemble as guaranteed by the 1st Amendment, and, therefore, he seeks punitive damages in the amount of $1,000,000.00.

The Second Count of Action is for invasion of privacy and plaintiff seeks damages in the sum of $1,000,000.00.

By Amended Complaint filed May 28, 1974, plaintiff alleges jurisdiction by virtue of 42 U.S.C.A., Section 1943.

On July 17, 1974, the defendant filed its Motion to Dismiss, with brief in support thereof.

At the outset, this Court will note that it is not dealing with a pro se complaint, but one filed by a member of the Bar of this State.

The Court notes that there is no 42 U.S.C.A., Section 1943. Plaintiff admits this fact in his brief and states that Section 1943 was a typographical mistake and that he should be allowed to amend to allege jurisdiction pursuant to 42 U.S.C.A. Section 1983.

Defendant admits in his brief that it is established that municipal corporations are not persons as have been legislatively defined for the purposes of civil rights action. Moor v. County of Alameda, et al. (1973); 411 U.S. 693; Monroe v. Pape (1961) 365 U.S. 167.

Defendant concedes that the Moor v. County of Alameda cases, supra, does effectively preclude this plaintiff from any cause of action against the City of Tulsa under the provisions of 42 U.S.C.A. 1983, but requests the Court to entertain the matter pursuant to pendent jurisdiction and decide the defendant was in violation of Article II, Section 24 of the Oklahoma Constitution. The Court notes that the Article relied on by plaintiff is the Article and Section conferring and delineating the statutory procedure for acquisition of property by eminent domain.

Plaintiff, in his brief asserts a right to amend his complaint to include the provisions of 42 U.S.C.A., Section 1988. Plaintiff, in his brief, asserts constitutional questions are involved in the present litigation.

The Court has carefully considered the entire file in this matter, and having perused and considered the pleadings in a light most favorable to the plaintiff finds that no cause of action has been stated by the plaintiff against the defendant and that the City of Tulsa, a municipal corporation, is not a person as has been legislatively defined for the purposes of the civil rights actions.

IT IS, THEREFORE, ORDERED that the Motion to Dismiss filed by the defendant be and the same is hereby sustained.

IT IS FURTHER ORDERED that the complaint and cause of action be and the same are hereby dismissed.

ENTERED this 3rd day of September, 1974.

Allen E. Barrow

CHIEF UNITED STATES DISTRICT JUDGE

JANUARY TERM - February 7, 1975

Before Honorable Oliver Seth and Honorable Robert H. McWilliams and Honorable James E. Barrett, Circuit Judges

CHARLES L. HAM,

Plaintiff-Appellant,

vs.

THE CITY OF TULSA,
A Municipal Corporation,

Defendant-Appellee.

No. 74-1631

A true copy
Teste
Howard K. Phillips
Clerk, U. S. Court of
Appeals, Tenth Circuit
By Sharon A. Child
Deputy Clerk

Upon consideration of the record and files in the above captioned case, it is ordered that the judgment of the United States District Court for the District of Oklahoma dismissing appellant's suit under the Civil Rights Act, 42 U.S.C. Section 1983, against the City of Tulsa, Oklahoma is affirmed: Moor v. County of Alameda, 411 U.S. 693, (1973); Monroe v. Pape, 365 U.S. 167 (1961).

The Clerk of this Court shall certify a copy of this order to the United States District Court for the District of Oklahoma as and for the mandate.

Robert L. Hoecker

ROBERT L. HOECKER, Chief Deputy Clerk